

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF ARIZONA**

IN RE: BARD IVC FILTERS PRODUCTS  
LIABILITY LITIGATION

THIS DOCUMENT RELATES TO:

KENNETH MATTHEWS  
Case No. 2:16-CV-02657-DGC

No. 2:15-MD-02641-DGC

**PLAINTIFFS' MOTION FOR DISMISSAL WITHOUT PREJUDICE**

Plaintiffs, Kenneth Matthews and April Matthews, through counsel undersigned, respectfully requests that the Court enter an order dismissing Case No. 2:16-CV-02657-DGC without prejudice pursuant to Rule 41(a)(2) of the Federal Rules of Civil Procedure. Defendant(s) does not oppose this Motion.

**I. INTRODUCTION**

Plaintiffs, through undersigned counsel, filed their complaint on August 5, 2016. *See* Complaint filed in Case No. 2:16-CV-02657-DGC, attached as Exhibit A. Plaintiffs had also retained other counsel, Zonies Law LLC, who filed a complaint for Plaintiffs on August 3, 2016. *See* Complaint filed in Case No. 2:16-CV-02621-DGC, attached as Exhibit B. Both actions for Plaintiffs were consolidated into Lead Case MDL-2641. *See* Text Entries dated August 3, 2016 and August 5, 2016; Docket Text No. 2, Case No. 2:16-cv-02657-DGC; Docket Text No. 2, Case No. 2:16-cv-02621-DGC.

Plaintiffs have notified the undersigned counsel that they wish to proceed with counsel at Zonies Law LLC. Now, pursuant to Rule 41(a)(2) of the Federal Rules of Civil Procedure, Plaintiffs move to dismiss Case NO. 2:16-CV-2657-DGC without prejudice pursuant to Rule 41(a)(2).

## **II. ARGUMENT**

An action may be dismissed without prejudice at a plaintiff's request by court order on terms that the Court considers proper. Fed. R. Civ. P. 41(a)(2); *Stevedoring Services of America v. Armilla Int'l B.V.*, 889 F.2d 919, 921, 1989 U.S. App. LEXIS 17456, \*3, 15 Fed. R. Serv. 3d (Callaghan) 982 (9th Cir. Cal. 1989); *Design Trend Int'l Interiors, Ltd. v. Huang*, 2007 U.S. Dist. LEXIS 66840, \*9, 2007 WL 2683790 (D. Ariz. Sept. 7, 2007); *Smith v. Lenches*, 263 F.3d 972, 976, 2001 U.S. App. LEXIS 19329, \*10, Fed. Sec. L. Rep. (CCH) P91,605, 50 Fed. R. Serv. 3d (Callaghan) 1289 (9th Cir. Cal. 2001); *Hepp v. Conoco, Inc.*, 97 Fed. Appx. 124, 125 \*, 2004 U.S. App. LEXIS 8790, \*2 (9th Cir. Mont. 2004). Accordingly, Plaintiffs, through undersigned counsel and with consent of Zonies Law LLC, respectfully request that the Court order that Plaintiffs' request for a voluntary dismissal without prejudice pursuant to Rule 41(a)(2).

## **III. CONCLUSION**

For the foregoing reasons, Plaintiffs, Kenneth Matthews and April Matthews, respectfully request that the Court enter Plaintiffs' proposed order.

RESPECTFULLY SUBMITTED this 25<sup>th</sup> day of January, 2017.

Marc J. Bern & Partners LLP

By: /s/ Debra Humphrey  
Debra Humphrey, Esq.  
NY SBN 5050448  
One Grand Central Place  
60 E. 42<sup>nd</sup> St., # 950  
New York, New York 10165  
(212) 702-5000 (Telephone)  
(212) 818-0164 (Facsimile)  
DHumphrey@BernLLP.com  
*Attorney for Plaintiffs*

**CERTIFICATE OF SERVICE**

I hereby certify that on this 25<sup>th</sup> day of January, 2017, I caused the foregoing document to be filed electronically with the Clerk's Office CM/ECF system for filing and transmittal of a Notice of Electronic Filing.

/s/ Debra Humphrey  
Debra Humphrey